

104TH CONGRESS
1ST SESSION

H. R. 2140

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

IN THE HOUSE OF REPRESENTATIVES

JULY 28, 1995

Mrs. SCHROEDER (for herself, Mr. ACKERMAN, Mr. RAMSTAD, Mrs. MALONEY, Mr. ENGEL, Ms. NORTON, Ms. VELÁZQUEZ, Mr. ROMERO-BARCELÓ, Mr. DELLUMS, Mr. DEFazio, Mr. MANTON, Mr. FROST, Ms. JACKSON-LEE, Mr. HILLIARD, Mr. EVANS, Ms. LOFGREN, Mr. WAXMAN, Mr. WYNN, Mr. FRANK of Massachusetts, Mr. UNDERWOOD, Mr. GEJD-ENSON, Mr. YATES, Mr. REYNOLDS, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to permit the creation or assignment of rights to employee pension benefits if necessary to satisfy a judgment against a plan participant or beneficiary for physically, sexually, or emotionally abusing a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “ERISA Child Abuse
5 Accountability Act of 1995”.

6 **SEC. 2. AMENDMENTS TO TITLE I OF THE EMPLOYEE RE-**
7 **TIREMENT INCOME SECURITY ACT OF 1974.**

8 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-
9 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sec-
10 tion 206(d)(3)(A) of the Employee Retirement Income Se-
11 curity Act of 1974 (29 U.S.C. 1056(d)(3)(A)) is amend-
12 ed—

13 (1) by inserting “or a child abuse order” after
14 “a domestic relations order”;

15 (2) by inserting “or a qualified child abuse
16 order” after “a qualified domestic relations order”;
17 and

18 (3) by inserting “or any qualified child abuse
19 order” after “any qualified domestic relations
20 order”.

21 (b) QUALIFIED CHILD ABUSE ORDERS.—Section
22 206(d)(3)(B) of such Act (29 U.S.C. 1056(d)(3)(B)) is
23 amended—

1 (1) in clause (i), by striking “the term” and in-
2 serting “The term”, and by striking “, and” at the
3 end and inserting a period;

4 (2) in clause (ii), by striking “the term” and in-
5 serting “The term”; and

6 (3) by adding at the end the following new
7 clauses:

8 “(iii) The term ‘qualified child abuse order’
9 means a child abuse order—

10 “(I) which creates or recognizes the
11 existence of an alternate payee’s right to,
12 or assigns to an alternate payee the right
13 to, receive all or a portion of the benefits
14 payable with respect to a participant under
15 a plan, and

16 “(II) with respect to which the re-
17 quirements of subparagraphs (C) and (D)
18 are met.

19 “(iv) The term ‘child abuse order’ means
20 any court order or other similar process for the
21 enforcement of a judgment rendered against a
22 participant or beneficiary under a plan for
23 physically, sexually, or emotionally abusing a
24 child. For purposes of this clause—

1 “(I) The term ‘judgment rendered for
2 physically, sexually, or emotionally abusing
3 a child’ means any legal claim perfected
4 through a final enforceable judgment,
5 which claim is based in whole or in part
6 upon the physical, sexual, or emotional
7 abuse of a child, whether or not that abuse
8 is accompanied by other actionable wrong-
9 doing, such as sexual exploitation or gross
10 negligence.

11 “(II) The term ‘child’ means an indi-
12 vidual under 18 years of age.”.

13 (c) EXEMPTION FROM PREEMPTION.—Section
14 514(b)(7) of such Act (29 U.S.C. 1144(b)(7)) is amended
15 by inserting “or qualified child abuse orders (within the
16 meaning of section 206(d)(3)(B)(iii))” before the period.

17 (d) CONFORMING AMENDMENTS.—Section 206(d)(3)
18 of such Act (29 U.S.C. 1056(d)(3)) is amended—

19 (1) in subparagraph (C), by inserting “or child
20 abuse order” after “A domestic relations order”;

21 (2) in subparagraph (D), by inserting “or child
22 abuse order” after “A domestic relations order”;

23 (3) in subparagraph (E)(i), by inserting “or
24 child abuse order” after “A domestic relations
25 order”;

1 (4) in subparagraph (G)(i), by inserting “or
2 child abuse order” after “any domestic relations
3 order”, by inserting “or child abuse orders” in
4 subclause (I) after “domestic relations orders”, and
5 by inserting “or a qualified child abuse order” in
6 subclause (II) after “a qualified domestic relations
7 order”;

8 (5) in subparagraph (G)(ii), by inserting “and
9 child abuse orders” after “domestic relations or-
10 ders”, by inserting “or child abuse order” after “do-
11 mestic relations order” each place it appears in
12 subclauses (II) and (III);

13 (6) in subparagraph (H)(i), by inserting “or
14 whether a child abuse order is a qualified child
15 abuse order” after “whether a domestic relations
16 order is a qualified domestic relations order”, and by
17 inserting “or a qualified child abuse order” after “to
18 be a qualified domestic relations order”;

19 (7) in subparagraph (H)(ii), by inserting “or a
20 qualified child abuse order” after “a qualified do-
21 mestic relations order”;

22 (8) in subparagraph (H)(iii), by inserting “or a
23 qualified child abuse order” after “a qualified do-
24 mestic relations order” each place it appears in
25 subclauses (I) and (II);

1 (9) in subparagraph (H)(iv), by inserting “or a
2 qualified child abuse order” after “a qualified do-
3 mestic relations order”;

4 (10) in subparagraph (H)(v), by inserting “or
5 child abuse order” after “the domestic relations
6 order”;

7 (11) in subparagraph (I)(i), by inserting “or
8 child abuse order” after “a domestic relations
9 order”, and by inserting “or qualified child abuse
10 order” after “a qualified domestic relations order”;

11 (12) in subparagraph (J), by inserting “or a
12 qualified child abuse order” after “a qualified do-
13 mestic relations order”;

14 (13) in subparagraph (K), by inserting “or
15 child abuse order” after “a domestic relations
16 order”; and

17 (14) in subparagraph (M), by inserting “or a
18 qualified child abuse order” after “a qualified do-
19 mestic relations order”.

20 **SEC. 3. AMENDMENTS TO THE INTERNAL REVENUE CODE**
21 **OF 1986.**

22 (a) CREATION OR ASSIGNMENT OF RIGHTS TO BENE-
23 FITS UNDER QUALIFIED CHILD ABUSE ORDERS.—Sub-
24 paragraph (B) of section 401(a)(13) of the Internal Reve-

1 nue Code of 1986 (relating to assignment of benefits) is
2 amended—

3 (1) by inserting “OR CHILD ABUSE ORDERS”
4 after “DOMESTIC RELATIONS ORDERS” in the
5 heading;

6 (2) by inserting “or a child abuse order” after
7 “a domestic relations order”; and

8 (3) by inserting “or a qualified child abuse
9 order” after “a qualified domestic relations order”.

10 (b) QUALIFIED CHILD ABUSE ORDERS.—Paragraph
11 (1) of section 414(p) of such Code (defining qualified do-
12 mestic relations order) is amended by adding at the end
13 the following new subparagraphs:

14 “(C) QUALIFIED CHILD ABUSE ORDER.—
15 The term ‘qualified child abuse order’ means a
16 child abuse order—

17 “(i) which creates or recognizes the
18 existence of an alternate payee’s right to,
19 or assigns to an alternate payee the right
20 to, receive all or a portion of the benefits
21 payable with respect to a participant under
22 a plan, and

23 “(ii) with respect to which the re-
24 quirements of paragraphs (2) and (3) are
25 met.

1 “(D) CHILD ABUSE ORDER.—

2 “(i) IN GENERAL.—The term ‘child
3 abuse order’ means any court order or
4 other similar process for the enforcement
5 of a judgment rendered against a partici-
6 pant or beneficiary under a plan for phys-
7 ically, sexually, or emotionally abusing a
8 child.

9 “(ii) DEFINITIONS.—For purposes of
10 this subparagraph—

11 “(I) The term ‘judgment ren-
12 dered for physically, sexually, or emo-
13 tionally abusing a child’ means any
14 legal claim perfected through a final
15 enforceable judgment, which claim is
16 based in whole or in part upon the
17 physical, sexual, or emotional abuse of
18 a child, whether or not that abuse is
19 accompanied by other actionable
20 wrongdoing, such as sexual exploi-
21 tation or gross negligence.

22 “(II) The term ‘child’ means an
23 individual under 18 years of age.”.

24 (c) CONFORMING AMENDMENTS.—Subsection (p) of
25 section 414 of such Code is amended—

1 (1) in paragraph (2), by inserting “or child
2 abuse order” after “A domestic relations order”;

3 (2) in paragraph (3), by inserting “or child
4 abuse order” after “A domestic relations order”;

5 (3) in paragraph (4)(A), by inserting “or child
6 abuse order” after “a domestic relations order”;

7 (4) in paragraph (6)(A), by inserting “or child
8 abuse order” after “any domestic relations order”,
9 by inserting “or child abuse orders” in clause (i)
10 after “domestic relations orders”, and by inserting
11 “or a qualified child abuse order” in clause (ii) after
12 “a qualified domestic relations order”;

13 (5) in paragraph (6)(B), by inserting “and
14 child abuse orders” after “domestic relations or-
15 ders”;

16 (6) in paragraph (7)(A), by inserting “or
17 whether a child abuse order is a qualified child
18 abuse order” after “whether a domestic relations
19 order is a qualified domestic relations order”, and by
20 inserting “or a qualified child abuse order” after “to
21 be a qualified domestic relations order”;

22 (7) in paragraph (7)(B), by inserting “OR
23 QUALIFIED CHILD SUPPORT ORDER” in the heading
24 after “QUALIFIED DOMESTIC RELATIONS ORDER”,

1 and by inserting “or a qualified child abuse order”
2 after “a qualified domestic relations order”;

3 (8) in paragraph (7)(C), by inserting “or a
4 qualified child abuse order” after “a qualified do-
5 mestic relations order” each place it appears in
6 clauses (i) and (ii);

7 (9) in paragraph (7)(D), by inserting “or a
8 qualified child abuse order” after “a qualified do-
9 mestic relations order”;

10 (10) in paragraph (7)(E), by inserting “or child
11 abuse order” after “the domestic relations order”;

12 (11) in paragraph (8), by inserting “or child
13 abuse order” after “a domestic relations order”;

14 (12) in paragraph (9), by inserting “or a quali-
15 fied child abuse order” after “a qualified domestic
16 relations order”;

17 (13) in paragraph (10), by inserting “or a
18 qualified child abuse order” after “a qualified do-
19 mestic relations order”; and

20 (14) in paragraph (11), by inserting “or a
21 qualified child abuse order” after “pursuant to a
22 qualified domestic relations order”, and by inserting
23 “or a child abuse order” after “pursuant to a do-
24 mestic relations order”.

1 (d) TAX TREATMENT OF DISTRIBUTIONS PURSUANT
2 TO QUALIFIED CHILD ABUSE ORDERS.—

3 (1) ALTERNATE PAYEE MUST INCLUDE BENE-
4 FITS IN GROSS INCOME.—Paragraph (1) of section
5 402(e) of such Code (relating to alternate payee
6 under qualified domestic relations order treated as
7 distributee) is amended by inserting “or a qualified
8 child abuse order (as defined in section 414(p))”
9 after “a qualified domestic relations order (as de-
10 fined in section 414(p))” each place it appears.

11 (2) ALLOCATION OF INVESTMENT IN THE CON-
12 TRACT.—Paragraph (10) of section 72(m) of such
13 Code (relating to determination of investment in the
14 contract in the case of qualified domestic relations
15 orders) is amended—

16 (A) in the heading, by inserting “AND
17 QUALIFIED CHILD ABUSE ORDERS” after
18 “QUALIFIED DOMESTIC RELATIONS ORDERS”;
19 and

20 (B) by inserting “or a qualified child abuse
21 order (as defined in section 414(p))” after “a
22 qualified domestic relations order (as defined in
23 section 414(p))”.

24 (3) CLARIFICATION OF ELIGIBILITY OF PARTIC-
25 IPANT FOR LUMP SUM TREATMENT.—

1 (A) Subparagraph (H) of section 402(d)(4)
2 of such Code (relating to balance to credit of
3 employee not to include amounts payable under
4 qualified domestic relations order) is amend-
5 ed—

6 (i) in the heading, by inserting “OR
7 QUALIFIED CHILD ABUSE ORDER” after
8 “QUALIFIED DOMESTIC RELATIONS
9 ORDER”; and

10 (ii) by inserting “or a qualified child
11 abuse order (within the meaning of section
12 414(p))” after “a qualified domestic rela-
13 tions order (within the meaning of section
14 414(p))”.

15 (B) Subparagraph (J) of section 402(d)(4)
16 of such Code is amended by inserting “, or
17 under a qualified child abuse order (within the
18 meaning of section 414(p)) of the balance to
19 the credit of an alternate payee,” after “former
20 spouse of the employee”.

21 **SEC. 4. EFFECTIVE DATE.**

22 The amendments made by this Act shall take effect
23 on January 1, 1996, except that, in the case of a child
24 abuse order entered before such date, the plan adminis-
25 trator—

1 (1) shall treat such order as a qualified child
2 abuse order if such administrator is paying benefits
3 pursuant to such order on such date, and

4 (2) may treat any other such order entered be-
5 fore such date as a qualified child abuse order even
6 if such order does not meet the requirements of such
7 amendments.

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